Supreme Court, U.S.
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JOSEPH F. SPANIOL, JR.
CLERK

**Case No. 85-57**

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1984

STOP-N-GO, INC.

Appellant,

v.

EDWARD BRADFIELD, ADMINISTRATOR OF THE ESTATE OF JANIS BRADFIELD, DECEASED,

Appellee,

**On Appeal from the Supreme Court of the State of Ohio**

## MOTION TO DISMISS

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## TABLE OF CONTENTS

1. TABLE OF AUTHORITIES..... ii
2. MOTION TO DISMISS..... 1
3. STATEMENT OF THE CASE ..... 1
4. ARGUMENT ..... 2
5. CONCLUSION ..... 3
6. CERTIFICATE OF SERVICE..... 4

## TABLE OF AUTHORITIES

*Blankenship v.Cincinnati Milcaron Chemicals, Inc.*,
69 OHIO STATE 2nd 608 (1982) ..... 1

*Jones v. VIP Development Co.*,
15 OHIO STATE 3rd 90 (1984) ..... 1

## MOTION TO DISMISS

Comes now the appellee-Bradfield herein by and through counsel and moves the Court to dismiss the within appeal pursuant to Supreme Court Rule 16 in that:

1. No substantial federal question is presented, and,
2. The federal question attempted to be presented here was neither raised nor ruled upon properly in the Courts below, and,
3. The judgment rests upon an adequate and independent state law non-federal ground.

RESPECTFULLY SUBMITTED.

## STATEMENT OF THE CASE AND FACTS

The outline of the case and the facts as found on appellee's jurisdictional statement in pages 2 through 6 thereof is essentially correct, but it is very important to note two especial matters with regard thereto: 1) the Ohio law which appellee wishes to challenge here on federal constitutional grounds applies only to the very limited class of torts which a plaintiff would be able to prove to the trier of facts in these cases were purely intentional on the part of the employer-defendant, and: 2) in neither the instant case nor the case of *Jones v. VIP Development Co.*, 15 Ohio State 3rd 90 (1984), did the Ohio Supreme Court depart from the rule announced in *Blankenship v. Cincinnati Milacron Chemicals, Inc.*, 69 Ohio State 2nd 608 (1982), as argued by the appellee. In both of the later cases, the Supreme Court of Ohio merely amplified and clarified the public policy of the state regarding how its Worker's Compensation laws are to be interpreted so as to give greatest benefit to the working people of the state.

## ARGUMENT

At page six of the jurisdictional statement, the appellee admits that the alleged federal constitutional issues were raised for the first time only in the Supreme Court of Ohio and were not discussed and argued as part of this case from the very beginning so as to have received full consideration by all lower courts which considered this matter. Accordingly, it appears at the outset that no federal constitutional issue has been timely raised for preservation for review by this Court, Supreme Court Rule 16(b).

In an attempt to show that there is a substantial federal question before this Court, the appellee mentions, and the appellant does not seriously deny, that many courts have analyzed state Worker's Compensation schemes at various times under the rubric of equal protection and due process standards accorded by the 14th Amendment. That is beside the point. (And on page nine of its jurisdictional statement, appellee even admits that no suspect groups, fundamental rights nor gender nor status questions are involved here.)

This case, and *Jones* as well as *Blankenship,* involve only the employers who are found guilty of an explicitly intentional tort. No other issue is at stake here. The arguments of appellee relative to complying versus non-complying employers is purely chimerical and totally specious. Violators of the law may always reap some imaginary benefit if they "get away with it." But here, there is no guarantee that they will "get away with it," and even if they do, it is certainly false to argue that the chances of a law-breaker avoiding a legal duty is sufficient reason to deny other deserving citizens more rights and more protections in intentional tort cases. But see, Ohio Revised Code 4123.77, at page 30a of appellee's jurisdictional

statement (which makes it clear that the non-complying law breakers in fact do not receive a greater benefit than employers who do comply with the law).

The corporate appellee here, in a feeble attempt to show that Ohio Supreme Court interpretations of its own state laws are irrational and serve no legitimate state purpose fails altogether to grasp the simple truth that the pronouncements in the *Jones* and *Blankenship* cases are final, definitive statements by the highest Court in the State of Ohio regarding the relationship between the state's own constitution and its statutes on Worker's Compensation.

In the case only of explicitly intentional torts, Ohio has simply chosen to give broad interpretation to its Worker's Compenstation laws in order to give deserving citizens a chance at full and adequate recovery for job-suffered catastrophes. This is in no sense a "double recovery" as the appellee suggests. It is an attempt to supplement the minimal entitlements of Worker's Compensation law with a judicially created additional remedy in the extremely narrow class of cases in which an employee can prove to the factfinder that he was the victim of an intentional tort at the hands of his employer - a desirable result which in no way offends the Constitution of the United States.

## CONCLUSION

WHEREFORE, for the reasons stated in the motion and the arguments advanced herein, and also in that no substantial federal question is presented and further whereas the decision below rests on an adequate and independent ground of state law, the within appeal should be dismissed.

## CERTIFICATE OF SERVICE

I hereby certify that a copy hereof was served by ordinary U.S. mail this 23 August 1985 on opposing counsel herein, namely, Michael J. Burdge, 1400 First National Plaza, Dayton, Ohio 45402. All parties required to be served are thus served.

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